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ADMITTED ONLY IN NY AND DC

January 23, 2006

VIA UPS OVERNIGHT

Paul D. Koethe
Jones Day
North Point
901 Lakeside Avenue
Cleveland, OH 44114-1190

Re: *Schwab v. Philip Morris USA, Inc.*

Dear Paul:

This responds to your January 9, 2006 letter regarding Dr. Hauser's reliance materials. As you know, I sent you an e-mail message last week advising you that we were preparing a response. Unfortunately, on the following day, without conferring with me first, your partner Mr. Grossman wrote to Magistrate Judge Gold complaining that we had not produced the materials you had requested. Cf. Local Civil Rule 26.5 ("Counsel are expected to cooperate with each other, consistent with the interests of their clients, in all phases of the discovery process and to be courteous in their dealings with each other, including in matters relating to scheduling and timing of various discovery procedures."). Accordingly, Magistrate Judge Gold is being copied on this letter. I hope that you and I can continue our discussion about the production of appropriate reliance materials without the premature involvement of the Court.

Turning to your letter, because Dr. Hauser's December 19, 2005 report (the "Report") is nearly identical to his earlier report, the voluminous materials previously produced on his behalf are also applicable to his recent report.¹ With respect to the attempted survey described in

¹ As you know, Dr. Hauser's initial report was produced on August 22, 2005. Two days later, on August 24, 2005, Plaintiffs produced HAUSER 001, a CD containing the exhibits to his report and the accompanying data file. The next day, August 25, 2005, Plaintiffs produced HAUSER 002, a CD containing over 400 computer files, as well as hard copy documents stamped HAUSER 003 through HAUSER 358, including e-mails and notes. This constituted the vast majority of Dr. Hauser's reliance materials, although Plaintiffs made several subsequent

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Paul D. Koethe
January 23, 2006
Page 2

footnote 2 of the Report, Dr. Hauser specifically states that he "do[es] not rely on any such survey as part of [his] expert opinions in this case," Report at 4 n.2, and he did not consider it in forming his opinions on "the value and importance of health risks to 'light' cigarette consumers in their decision to purchase a 'light' cigarette," *id.* ¶ 4. In addition, because the study described in footnote 2 has not been completed, it is "an ongoing study which has not yet produced any findings," and need not be produced. Order, Apr. 20, 2005, at 3.

Thank you for bringing the missing ethnicity and occupation data fields in HAUSER 587 to our attention. The enclosed CD-ROM, stamped HAUSER 588, contains a Microsoft Excel file titled AMS.xls, which should be identical to HAUSER 587 except for the addition of the ethnicity and occupation fields. We currently are investigating whether there is any profile data on the number of prior surveys completed or any "smoking and health related profile information."

Finally, Plaintiffs are willing to arrange for the affidavits that you request from AMS and Greenfield, provided that you agree that such affidavits will be in lieu of depositions of those entities, and that you will not thereafter seek to depose AMS or Greenfield. As you know, this was the Court's intention in suggesting affidavits. See Tr., Nov. 18, 2005, at 27:19-28:14. Mr. Grossman's letter, however, in insisting on depositions, appears to suggest that no form of affidavit will be sufficient. Accordingly, please confirm your agreement that the AMS and Greenfield affidavits will be in lieu of their depositions.

Very truly yours,



Brent W. Landau

Enclosure

cc: The Honorable Steven M. Gold (via UPS overnight, without enclosure)
All Counsel of Record (via CM/ECF and e-mail, without enclosure)

productions: on September 23, 2005, hard copy documents stamped HAUSER 359 through HAUSER 483, which consisted only of seven e-mail messages, a JP Morgan study, and Dr. Cohen's expert report; on November 10, 2005, a CD stamped HAUSER 484, which contained the profile data for the 627 survey participants and the ASP computer code for the web survey; and, on November 28, 2005, hard copy documents stamped HAUSER 485 through HAUSER 586, which consisted of two deposition transcripts and a form e-mail message sent to survey participants, and a CD stamped HAUSER 587, which contained profile data for the remaining potential survey respondents.